

By: Representatives Brown, Young

To: Universities and
Colleges; Appropriations

HOUSE BILL NO. 1123

1 AN ACT TO AUTHORIZE THE BOARD OF TRUSTEES OF STATE
2 INSTITUTIONS OF HIGHER LEARNING TO ALLOW THE STATE INSTITUTIONS OF
3 HIGHER LEARNING TO ESTABLISH GROUP PURCHASING PROGRAMS FOR THE
4 PURCHASE OF SUPPLIES, COMMODITIES AND EQUIPMENT; TO AMEND SECTION
5 31-7-9, MISSISSIPPI CODE OF 1972, TO EXEMPT INSTITUTIONS
6 PARTICIPATING IN SUCH GROUP PURCHASING PROGRAMS FROM REGULATIONS
7 ADOPTED BY THE OFFICE OF PURCHASING AND TRAVEL; TO AMEND SECTION
8 31-7-10, MISSISSIPPI CODE OF 1972, TO EXEMPT SUCH INSTITUTIONS
9 FROM STATE REQUIREMENTS RELATING TO LEASE-PURCHASE AGREEMENTS; TO
10 AMEND SECTION 31-7-11, MISSISSIPPI CODE OF 1972, TO EXEMPT SUCH
11 INSTITUTIONS FROM THE REQUIREMENT OF REPORTING CERTAIN INFORMATION
12 RELATING TO PURCHASES TO THE DEPARTMENT OF FINANCE AND
13 ADMINISTRATION; TO AMEND SECTION 31-7-12, MISSISSIPPI CODE OF
14 1972, TO EXEMPT SUCH INSTITUTIONS FROM REQUIREMENTS RELATING TO
15 THE STATE CONTRACT PRICE; TO AMEND SECTION 31-7-13, MISSISSIPPI
16 CODE OF 1972, TO EXEMPT SUCH INSTITUTIONS FROM STATE BIDDING
17 REQUIREMENTS; AND FOR RELATED PURPOSES.

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

19 **SECTION 1.** The following shall be codified as Section
20 31-7-46, Mississippi Code of 1972:

21 31-7-46. (1) The Board of Trustees of State Institutions of
22 Higher Learning may authorize the various institutions of higher
23 learning to organize, operate and/or participate in group
24 purchasing programs for the purchase of supplies, commodities and
25 equipment if, in the determination of the board, a group
26 purchasing program is likely to affect economy or efficiency in
27 the operations of the participating institutions.

28 (2) Purchases of supplies, commodities or equipment through
29 a group purchasing program by a state institution of higher
30 learning participating in a group purchasing program are exempt
31 from the requirements of Sections 31-7-9 through 31-7-13.

32 (3) Before December 1, 2007, and December 1 of each
33 subsequent year, the state institutions of higher learning
34 participating in any group purchase program authorized under this

35 section shall prepare and submit to the Chairmen of the
36 Appropriations Committees of the House of Representatives and
37 Senate a report analyzing the savings and economic benefits
38 derived by the institutions through participation in the group
39 purchase program or programs. In lieu of each participating
40 institution submitting an individual report, the Board of Trustees
41 of State Institutions of Higher Learning, in its discretion, may
42 elect to compile such data into a single report.

43 **SECTION 2.** Section 31-7-9, Mississippi Code of 1972, is
44 amended as follows:

45 31-7-9. (1) (a) The Office of Purchasing and Travel shall
46 adopt purchasing regulations governing the purchase by any agency
47 of any commodity or commodities and establishing standards and
48 specifications for a commodity or commodities and the maximum fair
49 prices of a commodity or commodities, subject to the approval of
50 the Public Procurement Review Board. It shall have the power to
51 amend, add to or eliminate purchasing regulations. The adoption
52 of, amendment, addition to or elimination of purchasing
53 regulations shall be based upon a determination by the Office of
54 Purchasing and Travel with the approval of the Public Procurement
55 Review Board, that such action is reasonable and practicable and
56 advantageous to promote efficiency and economy in the purchase of
57 commodities by the agencies of the state. Upon the adoption of
58 any purchasing regulation, or an amendment, addition or
59 elimination therein, copies of same shall be furnished to the
60 State Auditor and to all agencies affected thereby. Thereafter,
61 and except as otherwise may be provided in subsection (2) of this
62 section, no agency of the state shall purchase any commodities
63 covered by existing purchasing regulations unless such commodities
64 be in conformity with the standards and specifications set forth
65 in the purchasing regulations and unless the price thereof does
66 not exceed the maximum fair price established by such purchasing
67 regulations. The said Office of Purchasing and Travel shall

68 furnish to any county or municipality or other local public agency
69 of the state requesting same, copies of purchasing regulations
70 adopted by the Office of Purchasing and Travel and any amendments,
71 changes or eliminations of same that may be made from time to
72 time.

73 (b) The Office of Purchasing and Travel may adopt
74 purchasing regulations governing the use of credit cards,
75 procurement cards and purchasing club membership cards to be used
76 by state agencies, governing authorities of counties and
77 municipalities and the Chickasawhay Natural Gas District. Use of
78 the cards shall be in strict compliance with the regulations
79 promulgated by the office. Any amounts due on the cards shall
80 incur interest charges as set forth in Section 31-7-305 and shall
81 not be considered debt.

82 (2) The Office of Purchasing and Travel shall adopt, subject
83 to the approval of the Public Procurement Review Board, purchasing
84 regulations governing the purchase of unmarked vehicles to be used
85 by the Bureau of Narcotics and Department of Public Safety in
86 official investigations pursuant to Section 25-1-87. Such
87 regulations shall ensure that purchases of such vehicles shall be
88 at a fair price and shall take into consideration the peculiar
89 needs of the Bureau of Narcotics and Department of Public Safety
90 in undercover operations.

91 (3) The Office of Purchasing and Travel shall adopt, subject
92 to the approval of the Public Procurement Review Board,
93 regulations governing the certification process for certified
94 purchasing offices. Such regulations shall require entities
95 desiring to be classified as certified purchasing offices to
96 submit applications and applicable documents on an annual basis,
97 at which time the Office of Purchasing and Travel may provide the
98 governing entity with a certification valid for one (1) year from
99 the date of issuance.

100 (4) Purchases of commodities by a state institution of
101 higher learning participating in a group purchasing program
102 authorized under Section 31-7-46 are exempt from the regulations
103 adopted by the Office of Purchasing and Travel pursuant to this
104 section.

105 **SECTION 3.** Section 31-7-10, Mississippi Code of 1972, is
106 amended as follows:

107 31-7-10. (1) For the purposes of this section, the term
108 "equipment" shall mean equipment, furniture, and if applicable,
109 associated software and other applicable direct costs associated
110 with the acquisition. In addition to its other powers and duties,
111 the Department of Finance and Administration shall have the
112 authority to develop a master lease-purchase program and, pursuant
113 to that program, shall have the authority to execute on behalf of
114 the state master lease-purchase agreements for equipment to be
115 used by an agency, as provided in this section. Each agency
116 electing to acquire equipment by a lease-purchase agreement shall
117 participate in the Department of Finance and Administration's
118 master lease-purchase program, unless the Department of Finance
119 and Administration makes a determination that such equipment
120 cannot be obtained under the program or unless the equipment can
121 be obtained elsewhere at an overall cost lower than that for which
122 the equipment can be obtained under the program. Such
123 lease-purchase agreements may include the refinancing or
124 consolidation, or both, of any state agency lease-purchase
125 agreements entered into after June 30, 1990.

126 (2) All funds designated by agencies for procurement of
127 equipment and financing thereof under the master lease-purchase
128 program shall be paid into a special fund created in the State
129 Treasury known as the "Master Lease-Purchase Program Fund," which
130 shall be used by the Department of Finance and Administration for
131 payment to the lessors for equipment acquired under master
132 lease-purchase agreements.

133 (3) Upon final approval of an appropriation bill, each
134 agency shall submit to the Public Procurement Review Board a
135 schedule of proposed equipment acquisitions for the master
136 lease-purchase program. Upon approval of an equipment schedule by
137 the Public Procurement Review Board with the advice of the
138 Department of Information Technology Services, the Office of
139 Purchasing and Travel, and the Division of Energy and
140 Transportation of the Mississippi Development Authority as it
141 pertains to energy efficient climate control systems, the Public
142 Procurement Review Board shall forward a copy of the equipment
143 schedule to the Department of Finance and Administration.

144 (4) The level of lease-purchase debt recommended by the
145 Department of Finance and Administration shall be subject to
146 approval by the State Bond Commission. After such approval, the
147 Department of Finance and Administration shall be authorized to
148 advertise and solicit written competitive proposals for a lessor,
149 who will purchase the equipment pursuant to bid awards made by the
150 using agency under a given category and then transfer the
151 equipment to the Department of Finance and Administration as
152 lessee, pursuant to a master lease-purchase agreement.

153 The Department of Finance and Administration shall select the
154 successful proposer for the financing of equipment under the
155 master lease-purchase program with the approval of the State Bond
156 Commission.

157 (5) Each master lease-purchase agreement, and any subsequent
158 amendments, shall include such terms and conditions as the State
159 Bond Commission shall determine to be appropriate and in the
160 public interest, and may include any covenants deemed necessary or
161 desirable to protect the interests of the lessor, including, but
162 not limited to, provisions setting forth the interest rate (or
163 method for computing interest rates) for financing pursuant to
164 such agreement, covenants concerning application of payments and
165 funds held in the Master Lease-Purchase Program Fund, covenants to

166 maintain casualty insurance with respect to equipment subject to
167 the master lease-purchase agreement (and all state agencies are
168 specifically authorized to purchase any insurance required by a
169 master lease-purchase agreement) and covenants precluding or
170 limiting the right of the lessee or user to acquire equipment
171 within a specified time (not to exceed five (5) years) after
172 cancellation on the basis of a failure to appropriate funds for
173 payment of amounts due under a lease-purchase agreement covering
174 comparable equipment. The State Bond Commission shall transmit
175 copies of each such master lease-purchase agreement and each such
176 amendment to the Joint Legislative Budget Committee. To the
177 extent provided in any master lease-purchase agreement, title to
178 equipment leased pursuant thereto shall be deemed to be vested in
179 the state or the user of the equipment (as specified in such
180 master lease-purchase agreement), subject to default under or
181 termination of such master lease-purchase agreement.

182 A master lease-purchase agreement may provide for payment by
183 the lessor to the lessee of the purchase price of the equipment to
184 be acquired pursuant thereto prior to the date on which payment is
185 due to the vendor for such equipment and that the lease payments
186 by the lessee shall commence as though the equipment had been
187 provided on the date of payment. If the lessee, or lessee's
188 escrow agent, has sufficient funds for payment of equipment
189 purchases prior to payment due date to vendor of equipment, such
190 funds shall be held or utilized on an as-needed basis for payment
191 of equipment purchases either by the State Treasurer (in which
192 event the master lease-purchase agreement may include provisions
193 concerning the holding of such funds, the creation of a security
194 interest for the benefit of the lessor in such funds until
195 disbursed and other appropriate provisions approved by the Bond
196 Commission) or by a corporate trustee selected by the Department
197 of Finance and Administration (in which event the Department of
198 Finance and Administration shall have the authority to enter into

199 an agreement with such a corporate trustee containing terms and
200 conditions approved by the Bond Commission). Earnings on any
201 amount paid by the lessor prior to the acquisition of the
202 equipment may be used to make lease payments under the master
203 lease-purchase agreement or applied to pay costs and expenses
204 incurred in connection with such lease-purchase agreement. In
205 such event, the equipment use agreements with the user agency may
206 provide for lease payments to commence upon the date of payment by
207 the lessor and may also provide for a credit against such payments
208 to the extent that investment receipts from investment of the
209 purchase price are to be used to make lease-purchase payments.

210 (6) The annual rate of interest paid under any
211 lease-purchase agreement authorized under this section shall not
212 exceed the maximum interest rate to maturity on general obligation
213 indebtedness permitted under Section 75-17-101.

214 (7) The Department of Finance and Administration shall
215 furnish the equipment to the various agencies, also known as the
216 user, pursuant to an equipment-use agreement developed by the
217 Department of Finance and Administration. Such agreements shall
218 require that all monthly payments due from such agency be paid,
219 transferred or allocated into the Master Lease-Purchase Program
220 Fund pursuant to a schedule established by the Department of
221 Finance and Administration. In the event such sums are not paid
222 by the defined payment period, the Executive Director of the
223 Department of Finance and Administration shall issue a requisition
224 for a warrant to draw such amount as may be due from any funds
225 appropriated for the use of the agency which has failed to make
226 the payment as agreed.

227 (8) All master lease-purchase agreements executed under the
228 authority of this section shall contain the following annual
229 allocation dependency clause or an annual allocation dependency
230 clause which is substantially equivalent thereto: "The
231 continuation of each equipment schedule to this agreement is

232 contingent in whole or in part upon the appropriation of funds by
233 the Legislature to make the lease-purchase payments required under
234 such equipment schedule. If the Legislature fails to appropriate
235 sufficient funds to provide for the continuation of the
236 lease-purchase payments under any such equipment schedule, then
237 the obligations of the lessee and of the agency to make such
238 lease-purchase payments and the corresponding provisions of any
239 such equipment schedule to this agreement shall terminate on the
240 last day of the fiscal year for which appropriations were made."

241 (9) The maximum lease term for any equipment acquired under
242 the master lease-purchase program shall not exceed the useful life
243 of such equipment as determined according to the upper limit of
244 the asset depreciation range (ADR) guidelines for the Class Life
245 Asset Depreciation Range System established by the Internal
246 Revenue Service pursuant to the United States Internal Revenue
247 Code and Regulations thereunder as in effect on December 31, 1980,
248 or comparable depreciation guidelines with respect to any
249 equipment not covered by ADR guidelines. The Department of
250 Finance and Administration shall be deemed to have met the
251 requirements of this subsection if the term of a master
252 lease-purchase agreement does not exceed the weighted average
253 useful life of all equipment covered by such agreement and the
254 schedules thereto as determined by the Department of Finance and
255 Administration. For purposes of this subsection, the "term of a
256 master lease-purchase agreement" shall be the weighted average
257 maturity of all principal payments to be made under such master
258 lease-purchase agreement and all schedules thereto.

259 (10) Interest paid on any master lease-purchase agreement
260 under this section shall be exempt from State of Mississippi
261 income taxation. All equipment, and the purchase thereof by any
262 lessor, acquired under the master lease-purchase program and all
263 lease-purchase payments with respect thereto shall be exempt from
264 all Mississippi sales, use and ad valorem taxes.

265 (11) The Governor, in his annual executive budget to the
266 Legislature, shall recommend appropriations sufficient to provide
267 funds to pay all amounts due and payable during the applicable
268 fiscal year under master lease-purchase agreements entered into
269 pursuant to this section.

270 (12) Any master lease-purchase agreement reciting in
271 substance that such agreement has been entered into pursuant to
272 this section shall be conclusively deemed to have been entered
273 into in accordance with all of the provisions and conditions set
274 forth in this section. Any defect or irregularity arising with
275 respect to procedures applicable to the acquisition of any
276 equipment shall not invalidate or otherwise limit the obligation
277 of the Department of Finance and Administration, or the state or
278 any agency of the state, under any master lease-purchase agreement
279 or any equipment-use agreement.

280 (13) There shall be maintained by the Department of Finance
281 and Administration, with respect to each master lease-purchase
282 agreement, an itemized statement of the cash price, interest
283 rates, interest costs, commissions, debt service schedules and all
284 other costs and expenses paid by the state incident to the
285 lease-purchase of equipment under such agreement.

286 (14) Lease-purchase agreements entered into by the Board of
287 Trustees of State Institutions of Higher Learning pursuant to the
288 authority of Section 37-101-413 or by any other agency which has
289 specific statutory authority other than pursuant to Section
290 31-7-13(e) to acquire equipment by lease-purchase shall not be
291 made pursuant to the master lease-purchase program under this
292 section, unless the Board of Trustees of State Institutions of
293 Higher Learning or such other agency elects to participate as to
294 part or all of its lease-purchase acquisitions in the master
295 lease-purchase program pursuant to this section. Equipment
296 procured through a master lease-purchase agreement by any state
297 institution of higher learning participating in a group purchasing

298 program authorized under Section 31-7-46 is exempt from the
299 requirements of this section.

300 (15) The Department of Finance and Administration may
301 develop a master lease-purchase program for school districts and,
302 pursuant to that program, may execute on behalf of the school
303 districts master lease-purchase agreements for equipment to be
304 used by the school districts. The form and structure of this
305 program shall be substantially the same as set forth in this
306 section for the master lease-purchase program for state agencies.
307 If sums due from a school district under the master lease-purchase
308 program are not paid by the expiration of the defined payment
309 period, the Executive Director of the Department of Finance and
310 Administration may withhold such amount that is due from the
311 school district's minimum education or adequate education program
312 fund allotments.

313 (16) The Department of Finance and Administration may
314 develop a master lease-purchase program for community and junior
315 college districts and, pursuant to that program, may execute on
316 behalf of the community and junior college districts master
317 lease-purchase agreements for equipment to be used by the
318 community and junior college districts. The form and structure of
319 this program must be substantially the same as set forth in this
320 section for the master lease-purchase program for state agencies.
321 If sums due from a community or junior college district under the
322 master lease-purchase program are not paid by the expiration of
323 the defined payment period, the Executive Director of the
324 Department of Finance and Administration may withhold an amount
325 equal to the amount due under the program from any funds allocated
326 for that community or junior college district in the state
327 appropriations for the use and support of the community and junior
328 colleges.

329 **SECTION 4.** Section 31-7-11, Mississippi Code of 1972, is
330 amended as follows:

331 31-7-11. Each agency of the state shall furnish information
332 relative to its purchase of commodities, and as to its method of
333 purchasing such commodities, to the Department of Finance and
334 Administration annually and at such other times as the Department
335 of Finance and Administration may request.

336 The Department of Finance and Administration shall have
337 supervision over the purchasing and purchasing practices of each
338 state agency and may by regulation or order correct any practice
339 that appears contrary to the provisions of this chapter or to the
340 best interests of the state. If it shall appear that any agency
341 is not practicing economy in its purchasing or is permitting
342 favoritism or any improper purchasing practice, the Department of
343 Finance and Administration shall require that the agency
344 immediately cease such improper activity, with full and complete
345 authority in the Department of Finance and Administration to carry
346 into effect its directions in such regard.

347 All purchases, trade-ins, sales or transfer of personal
348 property made by any officer, board, agency, department or branch
349 of the state government except the Legislature shall be subject to
350 the approval of the Department of Finance and Administration.
351 Such transaction shall be made in accordance with rules and
352 regulations of the Department of Finance and Administration
353 relating to the purchase of state-owned motor vehicles and all
354 other personal property. The title of such property shall remain
355 in the name of the state.

356 Purchases of commodities by a state institution of higher
357 learning participating in a group purchasing program authorized
358 under Section 31-7-46 are exempt from the reporting requirements
359 of this section.

360 **SECTION 5.** Section 31-7-12, Mississippi Code of 1972, is
361 amended as follows:

362 31-7-12. (1) Except in regard to purchases of unmarked
363 vehicles made in accordance with purchasing regulations adopted by

364 the Department of Finance and Administration pursuant to Section
365 31-7-9(2), all agencies shall purchase commodities at the state
366 contract price from the approved source, unless approval is
367 granted by the Department of Finance and Administration to solicit
368 purchases outside the terms of the contracts. However, prices
369 accepted by an agency shall be less than the prices set by the
370 state contract. Prices accepted by an agency shall be obtained in
371 compliance with paragraph (a), (b) or (c) of Section 31-7-13. It
372 shall be the responsibility of the Department of Finance and
373 Administration to ascertain that the resulting prices shall
374 provide a cost effective alternative to the established state
375 contract.

376 (2) Governing authorities may purchase commodities approved
377 by the Department of Finance and Administration from the state
378 contract vendor, or from any source offering the identical
379 commodity, at a price not exceeding the state contract price
380 established by the Department of Finance and Administration for
381 such commodity, without obtaining or advertising for competitive
382 bids. Governing authorities that do not exercise the option to
383 purchase such commodities from the state contract vendor or from
384 another source offering the identical commodity at a price not
385 exceeding the state contract price established by the Department
386 of Finance and Administration shall make such purchases pursuant
387 to the provisions of Section 31-7-13 without regard to state
388 contract prices established by the Department of Finance and
389 Administration, unless such purchases are authorized to be made
390 under subsection (5) of this section.

391 (3) Nothing in this section shall prohibit governing
392 authorities from purchasing, pursuant to subsection (2) of this
393 section, commodities approved by the Department of Finance and
394 Administration at a price not exceeding the state contract price
395 established by the Department of Finance and Administration.

396 (4) The Department of Finance and Administration shall
397 ensure that the prices of all commodities on the state contract
398 are the lowest and best prices available from any source offering
399 that commodity at the same level of quality or service, utilizing
400 the reasonable standards established therefor by the Department of
401 Finance and Administration. If the Department of Finance and
402 Administration does not list an approved price for the particular
403 item involved, purchase shall be made according to statutory
404 bidding and licensing requirements. To encourage prudent
405 purchasing practices, the Department of Finance and Administration
406 shall be authorized and empowered to exempt certain commodities
407 from the requirement that the lowest and best price be approved by
408 order placed on its minutes.

409 (5) Any school district may purchase commodities from
410 vendors with which any levying authority of the school district,
411 as defined in Section 37-57-1, has contracted through competitive
412 bidding procedures pursuant to Section 31-7-13 for purchases of
413 the same commodities. Purchases authorized by this subsection may
414 be made by a school district without obtaining or advertising for
415 competitive bids, and such purchases shall be made at the same
416 prices and under the same conditions as purchases of the same
417 commodities are to be made by the levying authority of the school
418 district under the contract with the vendor.

419 (6) Purchases of commodities by a state institution of
420 higher learning participating in a group purchasing program
421 authorized under Section 31-7-46 are exempt from the requirements
422 of this section.

423 **SECTION 6.** Section 31-7-13, Mississippi Code of 1972, is
424 amended as follows:

425 31-7-13. All agencies and governing authorities shall
426 purchase their commodities and printing; contract for garbage
427 collection or disposal; contract for solid waste collection or

428 disposal; contract for sewage collection or disposal; contract for
429 public construction; and contract for rentals as herein provided.

430 (a) **Bidding procedure for purchases not over \$3,500.00.**

431 Purchases which do not involve an expenditure of more than Three
432 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
433 shipping charges, may be made without advertising or otherwise
434 requesting competitive bids. However, nothing contained in this
435 paragraph (a) shall be construed to prohibit any agency or
436 governing authority from establishing procedures which require
437 competitive bids on purchases of Three Thousand Five Hundred
438 Dollars (\$3,500.00) or less.

439 (b) **Bidding procedure for purchases over \$3,500.00 but**

440 **not over \$15,000.00.** Purchases which involve an expenditure of
441 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
442 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
443 freight and shipping charges may be made from the lowest and best
444 bidder without publishing or posting advertisement for bids,
445 provided at least two (2) competitive written bids have been
446 obtained. Any governing authority purchasing commodities pursuant
447 to this paragraph (b) may authorize its purchasing agent, or his
448 designee, with regard to governing authorities other than
449 counties, or its purchase clerk, or his designee, with regard to
450 counties, to accept the lowest and best competitive written bid.
451 Such authorization shall be made in writing by the governing
452 authority and shall be maintained on file in the primary office of
453 the agency and recorded in the official minutes of the governing
454 authority, as appropriate. The purchasing agent or the purchase
455 clerk, or their designee, as the case may be, and not the
456 governing authority, shall be liable for any penalties and/or
457 damages as may be imposed by law for any act or omission of the
458 purchasing agent or purchase clerk, or their designee,
459 constituting a violation of law in accepting any bid without
460 approval by the governing authority. The term "competitive

461 written bid" shall mean a bid submitted on a bid form furnished by
462 the buying agency or governing authority and signed by authorized
463 personnel representing the vendor, or a bid submitted on a
464 vendor's letterhead or identifiable bid form and signed by
465 authorized personnel representing the vendor. "Competitive" shall
466 mean that the bids are developed based upon comparable
467 identification of the needs and are developed independently and
468 without knowledge of other bids or prospective bids. Bids may be
469 submitted by facsimile, electronic mail or other generally
470 accepted method of information distribution. Bids submitted by
471 electronic transmission shall not require the signature of the
472 vendor's representative unless required by agencies or governing
473 authorities.

474 (c) **Bidding procedure for purchases over \$15,000.00.**

475 (i) **Publication requirement.** Purchases which
476 involve an expenditure of more than Fifteen Thousand Dollars
477 (\$15,000.00), exclusive of freight and shipping charges, may be
478 made from the lowest and best bidder after advertising for
479 competitive sealed bids once each week for two (2) consecutive
480 weeks in a regular newspaper published in the county or
481 municipality in which such agency or governing authority is
482 located. The date as published for the bid opening shall not be
483 less than seven (7) working days after the last published notice;
484 however, if the purchase involves a construction project in which
485 the estimated cost is in excess of Fifteen Thousand Dollars
486 (\$15,000.00), such bids shall not be opened in less than fifteen
487 (15) working days after the last notice is published and the
488 notice for the purchase of such construction shall be published
489 once each week for two (2) consecutive weeks. The notice of
490 intention to let contracts or purchase equipment shall state the
491 time and place at which bids shall be received, list the contracts
492 to be made or types of equipment or supplies to be purchased, and,
493 if all plans and/or specifications are not published, refer to the

494 plans and/or specifications on file. If there is no newspaper
495 published in the county or municipality, then such notice shall be
496 given by posting same at the courthouse, or for municipalities at
497 the city hall, and at two (2) other public places in the county or
498 municipality, and also by publication once each week for two (2)
499 consecutive weeks in some newspaper having a general circulation
500 in the county or municipality in the above provided manner. On
501 the same date that the notice is submitted to the newspaper for
502 publication, the agency or governing authority involved shall mail
503 written notice to, or provide electronic notification to the main
504 office of the Mississippi Contract Procurement Center that
505 contains the same information as that in the published notice.

506 (ii) **Bidding process amendment procedure.** If all
507 plans and/or specifications are published in the notification,
508 then the plans and/or specifications may not be amended. If all
509 plans and/or specifications are not published in the notification,
510 then amendments to the plans/specifications, bid opening date, bid
511 opening time and place may be made, provided that the agency or
512 governing authority maintains a list of all prospective bidders
513 who are known to have received a copy of the bid documents and all
514 such prospective bidders are sent copies of all amendments. This
515 notification of amendments may be made via mail, facsimile,
516 electronic mail or other generally accepted method of information
517 distribution. No addendum to bid specifications may be issued
518 within two (2) working days of the time established for the
519 receipt of bids unless such addendum also amends the bid opening
520 to a date not less than five (5) working days after the date of
521 the addendum.

522 (iii) **Filing requirement.** In all cases involving
523 governing authorities, before the notice shall be published or
524 posted, the plans or specifications for the construction or
525 equipment being sought shall be filed with the clerk of the board
526 of the governing authority. In addition to these requirements, a

527 bid file shall be established which shall indicate those vendors
528 to whom such solicitations and specifications were issued, and
529 such file shall also contain such information as is pertinent to
530 the bid.

531 (iv) **Specification restrictions.**

532 1. Specifications pertinent to such bidding
533 shall be written so as not to exclude comparable equipment of
534 domestic manufacture. However, if valid justification is
535 presented, the Department of Finance and Administration or the
536 board of a governing authority may approve a request for specific
537 equipment necessary to perform a specific job. Further, such
538 justification, when placed on the minutes of the board of a
539 governing authority, may serve as authority for that governing
540 authority to write specifications to require a specific item of
541 equipment needed to perform a specific job. In addition to these
542 requirements, from and after July 1, 1990, vendors of relocatable
543 classrooms and the specifications for the purchase of such
544 relocatable classrooms published by local school boards shall meet
545 all pertinent regulations of the State Board of Education,
546 including prior approval of such bid by the State Department of
547 Education.

548 2. Specifications for construction projects
549 may include an allowance for commodities, equipment, furniture,
550 construction materials or systems in which prospective bidders are
551 instructed to include in their bids specified amounts for such
552 items so long as the allowance items are acquired by the vendor in
553 a commercially reasonable manner and approved by the
554 agency/governing authority. Such acquisitions shall not be made
555 to circumvent the public purchasing laws.

556 (v) Agencies and governing authorities may
557 establish secure procedures by which bids may be submitted via
558 electronic means.

559 (d) **Lowest and best bid decision procedure.**

560 (i) **Decision procedure.** Purchases may be made
561 from the lowest and best bidder. In determining the lowest and
562 best bid, freight and shipping charges shall be included.
563 Life-cycle costing, total cost bids, warranties, guaranteed
564 buy-back provisions and other relevant provisions may be included
565 in the best bid calculation. All best bid procedures for state
566 agencies must be in compliance with regulations established by the
567 Department of Finance and Administration. If any governing
568 authority accepts a bid other than the lowest bid actually
569 submitted, it shall place on its minutes detailed calculations and
570 narrative summary showing that the accepted bid was determined to
571 be the lowest and best bid, including the dollar amount of the
572 accepted bid and the dollar amount of the lowest bid. No agency
573 or governing authority shall accept a bid based on items not
574 included in the specifications.

575 (ii) **Decision procedure for Certified Purchasing**
576 **Offices.** In addition to the decision procedure set forth in
577 paragraph (d)(i), Certified Purchasing Offices may also use the
578 following procedure: Purchases may be made from the bidder
579 offering the best value. In determining the best value bid,
580 freight and shipping charges shall be included. Life-cycle
581 costing, total cost bids, warranties, guaranteed buy-back
582 provisions, documented previous experience, training costs and
583 other relevant provisions may be included in the best value
584 calculation. This provision shall authorize Certified Purchasing
585 Offices to utilize a Request For Proposals (RFP) process when
586 purchasing commodities. All best value procedures for state
587 agencies must be in compliance with regulations established by the
588 Department of Finance and Administration. No agency or governing
589 authority shall accept a bid based on items or criteria not
590 included in the specifications.

591 (iii) **Construction project negotiations authority.**
592 If the lowest and best bid is not more than ten percent (10%)

593 above the amount of funds allocated for a public construction or
594 renovation project, then the agency or governing authority shall
595 be permitted to negotiate with the lowest bidder in order to enter
596 into a contract for an amount not to exceed the funds allocated.

597 (e) **Lease-purchase authorization.** For the purposes of
598 this section, the term "equipment" shall mean equipment, furniture
599 and, if applicable, associated software and other applicable
600 direct costs associated with the acquisition. Any lease-purchase
601 of equipment which an agency is not required to lease-purchase
602 under the master lease-purchase program pursuant to Section
603 31-7-10 and any lease-purchase of equipment which a governing
604 authority elects to lease-purchase may be acquired by a
605 lease-purchase agreement under this paragraph (e). Lease-purchase
606 financing may also be obtained from the vendor or from a
607 third-party source after having solicited and obtained at least
608 two (2) written competitive bids, as defined in paragraph (b) of
609 this section, for such financing without advertising for such
610 bids. Solicitation for the bids for financing may occur before or
611 after acceptance of bids for the purchase of such equipment or,
612 where no such bids for purchase are required, at any time before
613 the purchase thereof. No such lease-purchase agreement shall be
614 for an annual rate of interest which is greater than the overall
615 maximum interest rate to maturity on general obligation
616 indebtedness permitted under Section 75-17-101, and the term of
617 such lease-purchase agreement shall not exceed the useful life of
618 equipment covered thereby as determined according to the upper
619 limit of the asset depreciation range (ADR) guidelines for the
620 Class Life Asset Depreciation Range System established by the
621 Internal Revenue Service pursuant to the United States Internal
622 Revenue Code and regulations thereunder as in effect on December
623 31, 1980, or comparable depreciation guidelines with respect to
624 any equipment not covered by ADR guidelines. Any lease-purchase
625 agreement entered into pursuant to this paragraph (e) may contain

626 any of the terms and conditions which a master lease-purchase
627 agreement may contain under the provisions of Section 31-7-10(5),
628 and shall contain an annual allocation dependency clause
629 substantially similar to that set forth in Section 31-7-10(8).
630 Each agency or governing authority entering into a lease-purchase
631 transaction pursuant to this paragraph (e) shall maintain with
632 respect to each such lease-purchase transaction the same
633 information as required to be maintained by the Department of
634 Finance and Administration pursuant to Section 31-7-10(13).
635 However, nothing contained in this section shall be construed to
636 permit agencies to acquire items of equipment with a total
637 acquisition cost in the aggregate of less than Ten Thousand
638 Dollars (\$10,000.00) by a single lease-purchase transaction. All
639 equipment, and the purchase thereof by any lessor, acquired by
640 lease-purchase under this paragraph and all lease-purchase
641 payments with respect thereto shall be exempt from all Mississippi
642 sales, use and ad valorem taxes. Interest paid on any
643 lease-purchase agreement under this section shall be exempt from
644 State of Mississippi income taxation.

645 (f) **Alternate bid authorization.** When necessary to
646 ensure ready availability of commodities for public works and the
647 timely completion of public projects, no more than two (2)
648 alternate bids may be accepted by a governing authority for
649 commodities. No purchases may be made through use of such
650 alternate bids procedure unless the lowest and best bidder cannot
651 deliver the commodities contained in his bid. In that event,
652 purchases of such commodities may be made from one (1) of the
653 bidders whose bid was accepted as an alternate.

654 (g) **Construction contract change authorization.** In the
655 event a determination is made by an agency or governing authority
656 after a construction contract is let that changes or modifications
657 to the original contract are necessary or would better serve the
658 purpose of the agency or the governing authority, such agency or

659 governing authority may, in its discretion, order such changes
660 pertaining to the construction that are necessary under the
661 circumstances without the necessity of further public bids;
662 provided that such change shall be made in a commercially
663 reasonable manner and shall not be made to circumvent the public
664 purchasing statutes. In addition to any other authorized person,
665 the architect or engineer hired by an agency or governing
666 authority with respect to any public construction contract shall
667 have the authority, when granted by an agency or governing
668 authority, to authorize changes or modifications to the original
669 contract without the necessity of prior approval of the agency or
670 governing authority when any such change or modification is less
671 than one percent (1%) of the total contract amount. The agency or
672 governing authority may limit the number, manner or frequency of
673 such emergency changes or modifications.

674 (h) **Petroleum purchase alternative.** In addition to
675 other methods of purchasing authorized in this chapter, when any
676 agency or governing authority shall have a need for gas, diesel
677 fuel, oils and/or other petroleum products in excess of the amount
678 set forth in paragraph (a) of this section, such agency or
679 governing authority may purchase the commodity after having
680 solicited and obtained at least two (2) competitive written bids,
681 as defined in paragraph (b) of this section. If two (2)
682 competitive written bids are not obtained, the entity shall comply
683 with the procedures set forth in paragraph (c) of this section.
684 In the event any agency or governing authority shall have
685 advertised for bids for the purchase of gas, diesel fuel, oils and
686 other petroleum products and coal and no acceptable bids can be
687 obtained, such agency or governing authority is authorized and
688 directed to enter into any negotiations necessary to secure the
689 lowest and best contract available for the purchase of such
690 commodities.

691 (i) **Road construction petroleum products price**
692 **adjustment clause authorization.** Any agency or governing
693 authority authorized to enter into contracts for the construction,
694 maintenance, surfacing or repair of highways, roads or streets,
695 may include in its bid proposal and contract documents a price
696 adjustment clause with relation to the cost to the contractor,
697 including taxes, based upon an industry-wide cost index, of
698 petroleum products including asphalt used in the performance or
699 execution of the contract or in the production or manufacture of
700 materials for use in such performance. Such industry-wide index
701 shall be established and published monthly by the Mississippi
702 Department of Transportation with a copy thereof to be mailed,
703 upon request, to the clerks of the governing authority of each
704 municipality and the clerks of each board of supervisors
705 throughout the state. The price adjustment clause shall be based
706 on the cost of such petroleum products only and shall not include
707 any additional profit or overhead as part of the adjustment. The
708 bid proposals or document contract shall contain the basis and
709 methods of adjusting unit prices for the change in the cost of
710 such petroleum products.

711 (j) **State agency emergency purchase procedure.** If the
712 governing board or the executive head, or his designee, of any
713 agency of the state shall determine that an emergency exists in
714 regard to the purchase of any commodities or repair contracts, so
715 that the delay incident to giving opportunity for competitive
716 bidding would be detrimental to the interests of the state, then
717 the provisions herein for competitive bidding shall not apply and
718 the head of such agency shall be authorized to make the purchase
719 or repair. Total purchases so made shall only be for the purpose
720 of meeting needs created by the emergency situation. In the event
721 such executive head is responsible to an agency board, at the
722 meeting next following the emergency purchase, documentation of
723 the purchase, including a description of the commodity purchased,

724 the purchase price thereof and the nature of the emergency shall
725 be presented to the board and placed on the minutes of the board
726 of such agency. The head of such agency, or his designee, shall,
727 at the earliest possible date following such emergency purchase,
728 file with the Department of Finance and Administration (i) a
729 statement explaining the conditions and circumstances of the
730 emergency, which shall include a detailed description of the
731 events leading up to the situation and the negative impact to the
732 entity if the purchase is made following the statutory
733 requirements set forth in paragraph (a), (b) or (c) of this
734 section, and (ii) a certified copy of the appropriate minutes of
735 the board of such agency, if applicable. On or before September 1
736 of each year, the State Auditor shall prepare and deliver to the
737 Senate Fees, Salaries and Administration Committee, the House Fees
738 and Salaries of Public Officers Committee and the Joint
739 Legislative Budget Committee a report containing a list of all
740 state agency emergency purchases and supporting documentation for
741 each emergency purchase.

742 (k) **Governing authority emergency purchase procedure.**

743 If the governing authority, or the governing authority acting
744 through its designee, shall determine that an emergency exists in
745 regard to the purchase of any commodities or repair contracts, so
746 that the delay incident to giving opportunity for competitive
747 bidding would be detrimental to the interest of the governing
748 authority, then the provisions herein for competitive bidding
749 shall not apply and any officer or agent of such governing
750 authority having general or special authority therefor in making
751 such purchase or repair shall approve the bill presented therefor,
752 and he shall certify in writing thereon from whom such purchase
753 was made, or with whom such a repair contract was made. At the
754 board meeting next following the emergency purchase or repair
755 contract, documentation of the purchase or repair contract,
756 including a description of the commodity purchased, the price

757 thereof and the nature of the emergency shall be presented to the
758 board and shall be placed on the minutes of the board of such
759 governing authority.

760 (1) **Hospital purchase, lease-purchase and lease**
761 **authorization.**

762 (i) The commissioners or board of trustees of any
763 public hospital may contract with such lowest and best bidder for
764 the purchase or lease-purchase of any commodity under a contract
765 of purchase or lease-purchase agreement whose obligatory payment
766 terms do not exceed five (5) years.

767 (ii) In addition to the authority granted in
768 subparagraph (i) of this paragraph (1), the commissioners or board
769 of trustees is authorized to enter into contracts for the lease of
770 equipment or services, or both, which it considers necessary for
771 the proper care of patients if, in its opinion, it is not
772 financially feasible to purchase the necessary equipment or
773 services. Any such contract for the lease of equipment or
774 services executed by the commissioners or board shall not exceed a
775 maximum of five (5) years' duration and shall include a
776 cancellation clause based on unavailability of funds. If such
777 cancellation clause is exercised, there shall be no further
778 liability on the part of the lessee. Any such contract for the
779 lease of equipment or services executed on behalf of the
780 commissioners or board that complies with the provisions of this
781 subparagraph (ii) shall be excepted from the bid requirements set
782 forth in this section.

783 (m) **Exceptions from bidding requirements.** Excepted
784 from bid requirements are:

785 (i) **Purchasing agreements approved by department.**
786 Purchasing agreements, contracts and maximum price regulations
787 executed or approved by the Department of Finance and
788 Administration.

789 (ii) **Outside equipment repairs.** Repairs to
790 equipment, when such repairs are made by repair facilities in the
791 private sector; however, engines, transmissions, rear axles and/or
792 other such components shall not be included in this exemption when
793 replaced as a complete unit instead of being repaired and the need
794 for such total component replacement is known before disassembly
795 of the component; however, invoices identifying the equipment,
796 specific repairs made, parts identified by number and name,
797 supplies used in such repairs, and the number of hours of labor
798 and costs therefor shall be required for the payment for such
799 repairs.

800 (iii) **In-house equipment repairs.** Purchases of
801 parts for repairs to equipment, when such repairs are made by
802 personnel of the agency or governing authority; however, entire
803 assemblies, such as engines or transmissions, shall not be
804 included in this exemption when the entire assembly is being
805 replaced instead of being repaired.

806 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
807 of gravel or fill dirt which are to be removed and transported by
808 the purchaser.

809 (v) **Governmental equipment auctions.** Motor
810 vehicles or other equipment purchased from a federal agency or
811 authority, another governing authority or state agency of the
812 State of Mississippi, or any governing authority or state agency
813 of another state at a public auction held for the purpose of
814 disposing of such vehicles or other equipment. Any purchase by a
815 governing authority under the exemption authorized by this
816 subparagraph (v) shall require advance authorization spread upon
817 the minutes of the governing authority to include the listing of
818 the item or items authorized to be purchased and the maximum bid
819 authorized to be paid for each item or items.

820 (vi) **Intergovernmental sales and transfers.**
821 Purchases, sales, transfers or trades by governing authorities or

822 state agencies when such purchases, sales, transfers or trades are
823 made by a private treaty agreement or through means of
824 negotiation, from any federal agency or authority, another
825 governing authority or state agency of the State of Mississippi,
826 or any state agency or governing authority of another state.
827 Nothing in this section shall permit such purchases through public
828 auction except as provided for in subparagraph (v) of this
829 section. It is the intent of this section to allow governmental
830 entities to dispose of and/or purchase commodities from other
831 governmental entities at a price that is agreed to by both
832 parties. This shall allow for purchases and/or sales at prices
833 which may be determined to be below the market value if the
834 selling entity determines that the sale at below market value is
835 in the best interest of the taxpayers of the state. Governing
836 authorities shall place the terms of the agreement and any
837 justification on the minutes, and state agencies shall obtain
838 approval from the Department of Finance and Administration, prior
839 to releasing or taking possession of the commodities.

840 (vii) **Perishable supplies or food.** Perishable
841 supplies or food purchased for use in connection with hospitals,
842 the school lunch programs, homemaking programs and for the feeding
843 of county or municipal prisoners.

844 (viii) **Single source items.** Noncompetitive items
845 available from one (1) source only. In connection with the
846 purchase of noncompetitive items only available from one (1)
847 source, a certification of the conditions and circumstances
848 requiring the purchase shall be filed by the agency with the
849 Department of Finance and Administration and by the governing
850 authority with the board of the governing authority. Upon receipt
851 of that certification the Department of Finance and Administration
852 or the board of the governing authority, as the case may be, may,
853 in writing, authorize the purchase, which authority shall be noted
854 on the minutes of the body at the next regular meeting thereafter.

855 In those situations, a governing authority is not required to
856 obtain the approval of the Department of Finance and
857 Administration.

858 (ix) **Waste disposal facility construction**
859 **contracts.** Construction of incinerators and other facilities for
860 disposal of solid wastes in which products either generated
861 therein, such as steam, or recovered therefrom, such as materials
862 for recycling, are to be sold or otherwise disposed of; however,
863 in constructing such facilities, a governing authority or agency
864 shall publicly issue requests for proposals, advertised for in the
865 same manner as provided herein for seeking bids for public
866 construction projects, concerning the design, construction,
867 ownership, operation and/or maintenance of such facilities,
868 wherein such requests for proposals when issued shall contain
869 terms and conditions relating to price, financial responsibility,
870 technology, environmental compatibility, legal responsibilities
871 and such other matters as are determined by the governing
872 authority or agency to be appropriate for inclusion; and after
873 responses to the request for proposals have been duly received,
874 the governing authority or agency may select the most qualified
875 proposal or proposals on the basis of price, technology and other
876 relevant factors and from such proposals, but not limited to the
877 terms thereof, negotiate and enter contracts with one or more of
878 the persons or firms submitting proposals.

879 (x) **Hospital group purchase contracts.** Supplies,
880 commodities and equipment purchased by hospitals through group
881 purchase programs pursuant to Section 31-7-38.

882 (xi) **Information technology products.** Purchases
883 of information technology products made by governing authorities
884 under the provisions of purchase schedules, or contracts executed
885 or approved by the Mississippi Department of Information
886 Technology Services and designated for use by governing
887 authorities.

888 (xii) **Energy efficiency services and equipment.**
889 Energy efficiency services and equipment acquired by school
890 districts, community and junior colleges, institutions of higher
891 learning and state agencies or other applicable governmental
892 entities on a shared-savings, lease or lease-purchase basis
893 pursuant to Section 31-7-14.

894 (xiii) **Municipal electrical utility system fuel.**
895 Purchases of coal and/or natural gas by municipally-owned electric
896 power generating systems that have the capacity to use both coal
897 and natural gas for the generation of electric power.

898 (xiv) **Library books and other reference materials.**
899 Purchases by libraries or for libraries of books and periodicals;
900 processed film, video cassette tapes, filmstrips and slides;
901 recorded audio tapes, cassettes and diskettes; and any such items
902 as would be used for teaching, research or other information
903 distribution; however, equipment such as projectors, recorders,
904 audio or video equipment, and monitor televisions are not exempt
905 under this subparagraph.

906 (xv) **Unmarked vehicles.** Purchases of unmarked
907 vehicles when such purchases are made in accordance with
908 purchasing regulations adopted by the Department of Finance and
909 Administration pursuant to Section 31-7-9(2).

910 (xvi) **Election ballots.** Purchases of ballots
911 printed pursuant to Section 23-15-351.

912 (xvii) **Multichannel interactive video systems.**
913 From and after July 1, 1990, contracts by Mississippi Authority
914 for Educational Television with any private educational
915 institution or private nonprofit organization whose purposes are
916 educational in regard to the construction, purchase, lease or
917 lease-purchase of facilities and equipment and the employment of
918 personnel for providing multichannel interactive video systems
919 (ITSF) in the school districts of this state.

920 (xviii) **Purchases of prison industry products.**

921 From and after January 1, 1991, purchases made by state agencies
922 or governing authorities involving any item that is manufactured,
923 processed, grown or produced from the state's prison industries.

924 (xix) **Undercover operations equipment.** Purchases
925 of surveillance equipment or any other high-tech equipment to be
926 used by law enforcement agents in undercover operations, provided
927 that any such purchase shall be in compliance with regulations
928 established by the Department of Finance and Administration.

929 (xx) **Junior college books for rent.** Purchases by
930 community or junior colleges of textbooks which are obtained for
931 the purpose of renting such books to students as part of a book
932 service system.

933 (xxi) **Certain school district purchases.**

934 Purchases of commodities made by school districts from vendors
935 with which any levying authority of the school district, as
936 defined in Section 37-57-1, has contracted through competitive
937 bidding procedures for purchases of the same commodities.

938 (xxii) **Garbage, solid waste and sewage contracts.**

939 Contracts for garbage collection or disposal, contracts for solid
940 waste collection or disposal and contracts for sewage collection
941 or disposal.

942 (xxiii) **Municipal water tank maintenance**

943 **contracts.** Professional maintenance program contracts for the
944 repair or maintenance of municipal water tanks, which provide
945 professional services needed to maintain municipal water storage
946 tanks for a fixed annual fee for a duration of two (2) or more
947 years.

948 (xxiv) **Purchases of Mississippi Industries for the**

949 **Blind products.** Purchases made by state agencies or governing
950 authorities involving any item that is manufactured, processed or
951 produced by the Mississippi Industries for the Blind.

952 (xxv) **Purchases of state-adopted textbooks.**
953 Purchases of state-adopted textbooks by public school districts.
954 (xxvi) **Certain purchases under the Mississippi**
955 **Major Economic Impact Act.** Contracts entered into pursuant to the
956 provisions of Section 57-75-9(2) and (3).

957 (xxvii) **Used heavy or specialized machinery or**
958 **equipment for installation of soil and water conservation**
959 **practices purchased at auction.** Used heavy or specialized
960 machinery or equipment used for the installation and
961 implementation of soil and water conservation practices or
962 measures purchased subject to the restrictions provided in
963 Sections 69-27-331 through 69-27-341. Any purchase by the State
964 Soil and Water Conservation Commission under the exemption
965 authorized by this subparagraph shall require advance
966 authorization spread upon the minutes of the commission to include
967 the listing of the item or items authorized to be purchased and
968 the maximum bid authorized to be paid for each item or items.

969 (xxviii) **Hospital lease of equipment or services.**
970 Leases by hospitals of equipment or services if the leases are in
971 compliance with paragraph (1)(ii).

972 (xxix) **Purchases made pursuant to qualified**
973 **cooperative purchasing agreements.** Purchases made by certified
974 purchasing offices of state agencies or governing authorities
975 under cooperative purchasing agreements previously approved by the
976 Office of Purchasing and Travel and established by or for any
977 municipality, county, parish or state government or the federal
978 government, provided that the notification to potential
979 contractors includes a clause that sets forth the availability of
980 the cooperative purchasing agreement to other governmental
981 entities. Such purchases shall only be made if the use of the
982 cooperative purchasing agreements is determined to be in the best
983 interest of the governmental entity.

984 (xxx) **School yearbooks.** Purchases of school
985 yearbooks by state agencies or governing authorities; provided,
986 however, that state agencies and governing authorities shall use
987 for these purchases the RFP process as set forth in the
988 Mississippi Procurement Manual adopted by the Office of Purchasing
989 and Travel.

990 (xxxii) **Design-build method or the design-build**
991 **bridging method of contracting.** Contracts entered into the
992 provisions of Section 31-11-3(9).

993 (xxxiii) State institutions of higher learning
994 group purchase contracts. Supplies, commodities and equipment
995 purchased by state institutions of higher learning participating
996 in a group purchasing program authorized under Section 31-7-46.

997 (n) **Term contract authorization.** All contracts for the
998 purchase of:

999 (i) All contracts for the purchase of commodities,
1000 equipment and public construction (including, but not limited to,
1001 repair and maintenance), may be let for periods of not more than
1002 sixty (60) months in advance, subject to applicable statutory
1003 provisions prohibiting the letting of contracts during specified
1004 periods near the end of terms of office. Term contracts for a
1005 period exceeding twenty-four (24) months shall also be subject to
1006 ratification or cancellation by governing authority boards taking
1007 office subsequent to the governing authority board entering the
1008 contract.

1009 (ii) Bid proposals and contracts may include price
1010 adjustment clauses with relation to the cost to the contractor
1011 based upon a nationally published industry-wide or nationally
1012 published and recognized cost index. The cost index used in a
1013 price adjustment clause shall be determined by the Department of
1014 Finance and Administration for the state agencies and by the
1015 governing board for governing authorities. The bid proposal and
1016 contract documents utilizing a price adjustment clause shall

1017 contain the basis and method of adjusting unit prices for the
1018 change in the cost of such commodities, equipment and public
1019 construction.

1020 (o) **Purchase law violation prohibition and vendor**
1021 **penalty.** No contract or purchase as herein authorized shall be
1022 made for the purpose of circumventing the provisions of this
1023 section requiring competitive bids, nor shall it be lawful for any
1024 person or concern to submit individual invoices for amounts within
1025 those authorized for a contract or purchase where the actual value
1026 of the contract or commodity purchased exceeds the authorized
1027 amount and the invoices therefor are split so as to appear to be
1028 authorized as purchases for which competitive bids are not
1029 required. Submission of such invoices shall constitute a
1030 misdemeanor punishable by a fine of not less than Five Hundred
1031 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
1032 or by imprisonment for thirty (30) days in the county jail, or
1033 both such fine and imprisonment. In addition, the claim or claims
1034 submitted shall be forfeited.

1035 (p) **Electrical utility petroleum-based equipment**
1036 **purchase procedure.** When in response to a proper advertisement
1037 therefor, no bid firm as to price is submitted to an electric
1038 utility for power transformers, distribution transformers, power
1039 breakers, reclosers or other articles containing a petroleum
1040 product, the electric utility may accept the lowest and best bid
1041 therefor although the price is not firm.

1042 (q) **Fuel management system bidding procedure.** Any
1043 governing authority or agency of the state shall, before
1044 contracting for the services and products of a fuel management or
1045 fuel access system, enter into negotiations with not fewer than
1046 two (2) sellers of fuel management or fuel access systems for
1047 competitive written bids to provide the services and products for
1048 the systems. In the event that the governing authority or agency
1049 cannot locate two (2) sellers of such systems or cannot obtain

1050 bids from two (2) sellers of such systems, it shall show proof
1051 that it made a diligent, good-faith effort to locate and negotiate
1052 with two (2) sellers of such systems. Such proof shall include,
1053 but not be limited to, publications of a request for proposals and
1054 letters soliciting negotiations and bids. For purposes of this
1055 paragraph (q), a fuel management or fuel access system is an
1056 automated system of acquiring fuel for vehicles as well as
1057 management reports detailing fuel use by vehicles and drivers, and
1058 the term "competitive written bid" shall have the meaning as
1059 defined in paragraph (b) of this section. Governing authorities
1060 and agencies shall be exempt from this process when contracting
1061 for the services and products of a fuel management or fuel access
1062 systems under the terms of a state contract established by the
1063 Office of Purchasing and Travel.

1064 (r) **Solid waste contract proposal procedure.** Before
1065 entering into any contract for garbage collection or disposal,
1066 contract for solid waste collection or disposal or contract for
1067 sewage collection or disposal, which involves an expenditure of
1068 more than Fifty Thousand Dollars (\$50,000.00), a governing
1069 authority or agency shall issue publicly a request for proposals
1070 concerning the specifications for such services which shall be
1071 advertised for in the same manner as provided in this section for
1072 seeking bids for purchases which involve an expenditure of more
1073 than the amount provided in paragraph (c) of this section. Any
1074 request for proposals when issued shall contain terms and
1075 conditions relating to price, financial responsibility,
1076 technology, legal responsibilities and other relevant factors as
1077 are determined by the governing authority or agency to be
1078 appropriate for inclusion; all factors determined relevant by the
1079 governing authority or agency or required by this paragraph (r)
1080 shall be duly included in the advertisement to elicit proposals.
1081 After responses to the request for proposals have been duly
1082 received, the governing authority or agency shall select the most

1083 qualified proposal or proposals on the basis of price, technology
1084 and other relevant factors and from such proposals, but not
1085 limited to the terms thereof, negotiate and enter contracts with
1086 one or more of the persons or firms submitting proposals. If the
1087 governing authority or agency deems none of the proposals to be
1088 qualified or otherwise acceptable, the request for proposals
1089 process may be reinitiated. Notwithstanding any other provisions
1090 of this paragraph, where a county with at least thirty-five
1091 thousand (35,000) nor more than forty thousand (40,000)
1092 population, according to the 1990 federal decennial census, owns
1093 or operates a solid waste landfill, the governing authorities of
1094 any other county or municipality may contract with the governing
1095 authorities of the county owning or operating the landfill,
1096 pursuant to a resolution duly adopted and spread upon the minutes
1097 of each governing authority involved, for garbage or solid waste
1098 collection or disposal services through contract negotiations.

1099 (s) **Minority set-aside authorization.** Notwithstanding
1100 any provision of this section to the contrary, any agency or
1101 governing authority, by order placed on its minutes, may, in its
1102 discretion, set aside not more than twenty percent (20%) of its
1103 anticipated annual expenditures for the purchase of commodities
1104 from minority businesses; however, all such set-aside purchases
1105 shall comply with all purchasing regulations promulgated by the
1106 Department of Finance and Administration and shall be subject to
1107 bid requirements under this section. Set-aside purchases for
1108 which competitive bids are required shall be made from the lowest
1109 and best minority business bidder. For the purposes of this
1110 paragraph, the term "minority business" means a business which is
1111 owned by a majority of persons who are United States citizens or
1112 permanent resident aliens (as defined by the Immigration and
1113 Naturalization Service) of the United States, and who are Asian,
1114 Black, Hispanic or Native American, according to the following
1115 definitions:

1116 (i) "Asian" means persons having origins in any of
1117 the original people of the Far East, Southeast Asia, the Indian
1118 subcontinent, or the Pacific Islands.

1119 (ii) "Black" means persons having origins in any
1120 black racial group of Africa.

1121 (iii) "Hispanic" means persons of Spanish or
1122 Portuguese culture with origins in Mexico, South or Central
1123 America, or the Caribbean Islands, regardless of race.

1124 (iv) "Native American" means persons having
1125 origins in any of the original people of North America, including
1126 American Indians, Eskimos and Aleuts.

1127 (t) **Construction punch list restriction.** The
1128 architect, engineer or other representative designated by the
1129 agency or governing authority that is contracting for public
1130 construction or renovation may prepare and submit to the
1131 contractor only one (1) preliminary punch list of items that do
1132 not meet the contract requirements at the time of substantial
1133 completion and one (1) final list immediately before final
1134 completion and final payment.

1135 (u) **Purchase authorization clarification.** Nothing in
1136 this section shall be construed as authorizing any purchase not
1137 authorized by law.

1138 **SECTION 7.** This act shall take effect and be in force from
1139 and after July 1, 2006.